

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 68-81 are pending in the present application. No claims are amended or cancelled. Claim 81 is added. No new matter is added.

The outstanding Office Action notes that Claims 69-73 are allowed over the prior art of record. Applicant gratefully acknowledges the Examiner's indication of allowed claims.

WITHDRAWN CLAIMS

In the outstanding Office Action, Claims 74-76 and 78-80 were withdrawn from consideration as being directed to a non-elected invention based on constructive election by original presentation. MPEP §§818.02(a), 821.03; 37 CFR §1.145. The Office Action asserts that Claims 74-76 and 78-80 are directed to an invention that is independent or distinct from the originally claimed invention because: 1) certain steps of method claims 74-76 and 80 are "not needed to complete the finished article of the product"; and 2) the truss system including the wall is "not needed for the article of the product to exist and be joined to some other structural elements."

It is respectfully noted that a proper restriction requirement under 37 CFR §1.145 still requires the Examiner to properly show independence and distinctness. However, it is respectfully submitted that neither of the above reasons in the Office Action shows independence and distinctness as required by the MPEP.

Regarding Claims 74-76 and 80, MPEP §806.05(h) describes the proper test of distinctness for a product and process of use. Specifically, the Office Action does not show that either (A) the processes of using as claimed (the methods of securing a truss) can be practiced with another materially different product; or (B) the product (the claimed brackets) can be used in a materially different process. *See* MPEP §806.05(h).

Regarding Claims 78-79, MPEP §806.05(c) describes the criteria of distinctness between a combination and subcombination. Specifically, the Office Action does not show that: (A) the combination (the truss system) as claimed does not require the particulars of the subcombination (the claimed brackets) as claimed for patentability (to show novelty and unobviousness); **and** (B) the subcombination (the claimed brackets) can be shown to have utility either by itself or in another materially different combination. Both of these factors must be shown to satisfy the requirement of distinctness. *See* MPEP §806.05(c).

As the Office Action does not properly show independence and distinctness as required, it is respectfully requested that Claims 74-76 and 78-80 be reinstated and considered on the merits.

§102(B) REJECTIONS

The Office Action rejects Claims 68 and 77 under 35 U.S.C. §102(b) as anticipated by Kozloff. (U.S. Patent No. 6,009,681). For at least the reasons discussed below, Applicant respectfully requests the anticipatory rejections be withdrawn.

Claim 68 is directed to a bracket for securing a truss to a base including, *inter alia*, a pair of substantially perpendicular attachment faces and a pair of substantially perpendicular chord engaging faces, one of the attachment faces being adapted to overlie a substantially vertical web attachment face of a truss chord member for attachment thereto, and the other attachment face being adapted to overlie the generally planar upper surface of the base for attachment thereto. Claim 77 is directed to a bracket for securing a truss to the generally planar upper surface of a wall including, *inter alia*, a pair of substantially perpendicular attachment faces and a pair of substantially perpendicular chord engaging faces, one of said attachment faces being adapted to overlie a web attachment face of a truss chord member for attachment thereto, the other attachment face being adapted to overlie a generally planar upper surface of a wall for attachment thereto, and the chord engaging faces being adapted to overlie substantially perpendicular surfaces of the truss chord member. It is respectfully submitted that Kozloff does not teach or suggest the features of Claims 68 or 77.

In contrast to the claimed features, Kozloff teaches a truss bracket 28 for securing a spanning member 12 of a truss 10 to a wall plate 20 of an interior wall of a building. (Kozloff at Abstract). The truss bracket 28 includes a base portion 30, an inside upright portion 34, a top portion 40, and an outer lip portion 44 which cooperatively provide a spanning member reception channel 226. (Kozloff at Col. 6, ll. 24-28). In annotations, the Office Action appears to assert that the faces of Kozloff's inside upright portion 34 and top portion 40 teach a pair of substantially perpendicular attachment faces, and that

the faces (“66/70”) of Kozloff’s base portion 30 and outer lip portion 44 teach a pair of substantially perpendicular chord engaging faces.

However, neither of the faces of Kozloff’s inside upright portion 34 and top portion 40 (asserted in the Office Action as teaching attachment faces) is adapted to overlie an upper surface of a base or wall. As illustrated at Figs. 7-8 of Kozloff, the faces of the inside upright portion 34 and top portion 40 overlie a vertical side and horizontal top surface of the spanning member 12. Neither face 34, 40 of Kozloff is adapted to overlie at least an upper surface of the plate member 14 of the wall 16.

Further, the faces of Kozloff’s base portion 30 and outer lip portion 44 (asserted as teaching chord engaging faces) are not adapted to overlie substantially perpendicular surfaces of a truss chord member. As illustrated at Figs. 7-8 of Kozloff, the face of the base portion 30 overlies a plate member 14, and the face of the outer lip portion 44 overlies a vertical side of the spanning member 12. The vertical side of the spanning member 12 and the separate plate member 14 are not perpendicular surfaces of the spanning member 12.

Although the Office Action asserts that the last three lines of Claim 68 and the last four lines of Claim 77 “merely recite intended uses and this functional language which [sic] does not further limit the structure of a claim directed to an article,” it is respectfully submitted that this assertion renders the art rejections improper. Despite dismissing certain features in Applicant’s claims as non-limiting functional language, the Office Action asserts that Kozloff teaches attachment faces “**capable of**” overlying a web attachment face and a planar upper surface of a base. It is unclear what authority enables

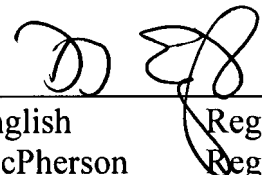
the Office Action to point to structural features in Kozloff corresponding to its own functional language (“capable of”) while explicitly disregarding similar functional language (“adapted to”) in Claims 68 and 77 as not describing structural features. It is respectfully noted that the determination of whether “adapted to” or “adapted for” clauses is a limitation in a claim depends on the specific facts of the case. MPEP §2111.04. As the Office Action appears able to identify structural features in Kozloff corresponding to some of the functional language it discounts in Applicant’s claims, it is respectfully submitted that all the claimed features should be considered on the merits.

Accordingly, it is respectfully requested that the rejections of Claims 68 and 77 be withdrawn.

It is also submitted that the remaining dependent claims are each patentable at least by virtue of their dependence without need to rely upon the further patentable limitations contained therein. Accordingly, withdrawal of the art rejections is respectfully solicited. New Claim 81, directed to a bracket, is also considered allowable as it recites features which are neither taught nor suggested by the art of record.

For at least the reasons discussed above, Applicant respectfully submits that the present application is in condition for formal allowance. Accordingly, an early and favorable reconsideration of this application is respectfully requested.

Respectfully submitted,



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